

November 20, 1950
Op. No. 50-254

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Wilson
Col. M. R. Tidwell, Jr.
USAF Staff Judge Advocate
Headquarters, Far East Air Forces
APO 925
San Francisco, California

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Dear Col. Tidwell:

This is in reply to your letter of November 2, 1950, regarding tax exemption for Master Sergeant Floyd O. Nance, who attempted, through his wife, to file his affidavit for exemption during the forepart of the year 1950.

We regret that the law seems to be plain that it will be necessary for Sergeant Nance and other individuals claiming tax exemption to appear in person, either before the assessor in his office or before one of his deputies within the county where he claims the exemption. We realize that this is a harsh rule and is eminently unfair but the legislature has written this law in such manner that we do not feel we could write an opinion otherwise.

In order to make our point clear to you so that you may inform Sergeant Nance and other people similarly situated, we will go into this matter rather completely.

Arizona Constitution, Article 9, Section 2, respecting tax exemption, is as follows:

"(Tax Exemption).-- There shall be exempt from taxation all federal, state, county and municipal property. Property of educational, charitable and religious associations or institutions not used or held for profit may be exempt from taxation by law. Public debts, as evidenced by the bonds of Arizona, its counties, municipalities, or other subdivisions, shall also be exempt from taxation. There shall be further

exempt from taxation the property of widows, honorably discharged soldiers, sailors, United States marines, members of revenue marine service, nurse corps, or of the components of auxiliaries of any thereof, residents of this state, not exceeding the amount of two thousand dollars (\$2,000.00), where the total assessment of such widow and such other persons named herein does not exceed \$5,000.00; provided, that no such exemption shall be made for such persons other than widows unless they shall have served at least sixty (60) days in the military or naval service of the United States during time of war, and shall have been residents of this state prior to September 1, 1945. All property in the state not exempt under the laws of the United States or under this constitution, or exempt by law under the provisions of this section shall be subject to taxation to be ascertained as provided by law. This section shall be self-executing."

The Arizona Legislature, in providing a procedure for tax exemption, enacted the following:

"Information to be given county assessor.-- Every person entitled to, or applying for exemption from taxation, as specified in said provision of the constitution, shall appear before the county assessor and give all information required and answer all questions contained in the forms and affidavit prescribed by the said commission and subscribe and swear to the same before such county assessor. Any false statement made or sworn to in such affidavit shall constitute and be punishable as perjury." (Section 73-303 ACA 1939)

"Proof of exemption.-- The assessor may, in his discretion, require additional proof of the facts stated by the affiant before allowing an exemption. Failure upon the part of a person entitled to exemption to make affidavit or furnish evidence as required by this act, between the first Monday in January and the thirtieth day of April of each year shall be deemed to be a waiver of exemption of such person. This act shall become effective January 1, 1950." (Section 73-304, Supp., ACA 1939)

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You will see by the reading of these two legislative enacted paragraphs that the legislature has narrowed this matter down to the point of requiring the individual to appear before the county assessor and subscribe and swear to the same before such county assessor. In this connection this office has previously written several opinions regarding various portions of the constitutional provision and the legislative enactments.

Under date of March 2, 1949, this office gave an opinion in answer to the following question:

"May a person with a power of attorney from a veteran file an exemption from taxation for the veteran under Section 73-303?"

The answer was "No", and the attorney used these words in reasoning this matter out:

" * * * It is our opinion this tax exemption may not be filed by a person with a power of attorney from a veteran. From a complete reading of the statute it appears that the veteran applying for an exemption must not only appear and answer the required questions, but he must also swear and subscribe to an accompanying affidavit. In addition the statute also provides a punishment for perjury for any false statement made or sworn to. These things could not be done through an agent, and a power of attorney is nothing more than an agency contract in writing. * * * "

At a later date, April 14, 1950, this office gave an opinion to Governor Dan E. Garvey respecting the actual appearing of a widow or veteran at the office of the assessor and said:

" * * * In light of the clear enunciation of this legislative enactment (Sec. 73-303) and the decision of the Supreme Court (67 Ariz. 330) and our former opinion, (a copy of which is enclosed) it is the opinion of this office that the individual claiming exemption will be required to appear before the county assessor. This, of course, would include any of the assessor's deputies, and we believe any place in the county, that is,

any of the deputies could go to the home or hospital of a disabled widow or veteran and secure the affidavit and the same would be valid. Many of the assessors of the state in the past have accepted affidavits signed by individuals before notaries public but that procedure does not seem to be the clear interpretation of the legislative enactment. We realize that this interpretation of the statute in question will work an extreme hardship on the very individuals who need the tax exemption most, but it is not our privilege to make a change in the law; it is within the province of the Legislature to correct this injustice. * * *

For some time the courts of Arizona have required the counties to refund taxes paid under protest by veterans who are otherwise qualified but failed to file the affidavit in proper time, or at all, with the assessor, but in a fairly recent case, State v. Allred, et al, 67 Ariz. 320, 195 Pac. 2d 163, the court said:

"1. Courts (Key #90 (6))

Where sufficient grounds are presented to justify reconsideration of legal principles involved, Supreme Court will review prior decisions and if justified will overrule same, notwithstanding doctrine of stare decisis.

2. Constitutional law. (key #36)
Taxation (keys #206, 249, 251)

The legislature cannot take away veteran's constitutional right of exemption from taxation, but can establish reasonable procedure for voluntary assertion or waiver of such right. (Code 1939, §§ 73-303, 73-304; Const. art. 9, § 2.)

3. Taxation (key #193)

Statutes requiring applicant for veteran's exemption from taxation to file affidavit with county assessor and providing that failure to timely file affidavit is waiver of such right is not such unreasonable restriction on exercise of constitutional right of exemption as to amount to an indirect denial of such right. Code 1939, §§ 73-303, 73-304; Const. art. 9 § 2."

4. Taxation (key #249, 631)
Veteran's failure to file claim for exemption from taxation for particular year as required by statute was waiver or loss of constitutional right to exemption from taxation for such year, and county could sell property for non-payment of taxes for such year. Code 1939, §§ 73-303, 73-304, 73-801 et seq.; Const. art 9, § 2."

Section 73-801 ACA 1939 provides in part as follows:

"When taxes deemed delinquent--Lien not affected by failure of officers.-- Taxes upon real estate, if unpaid, shall become delinquent on the first Monday in November and the first Monday in May of each year, and the county treasurer shall enforce the lien of the state upon such real estate, as provided herein. * * *

Section 73-804 ACA 1939 provides as follows:

"Form of notice of sale.-- (a) All real property upon which the taxes, including personal property taxes secured thereby, are unpaid and delinquent, shall be subject to sale as herein provided. The county treasurer shall prepare a list of all real property upon which the taxes are unpaid and delinquent, describing such real estate as the same is described on the tax roll, with an accompanying notice stating that so much of each tract of real property as may by him be deemed necessary for the purpose will, on a day specified, and succeeding days, be sold by him at public auction at the county treasurer's office, for the taxes, penalties, interest, and charges thereon, and taxes, penalties, interest and charges assessed against the owner thereof for personal property. The said treasurer shall send, by letter mail, to the owner of each parcel of said property, if the owner be known at his last known address, a copy of said notice of proposed sale. * * *

Section 73-806 ACA 1939 provides for the date of sale of property for delinquent taxes as follows:

"Date of sale--Striking off property to state--Sale as one parcel.--The day designated in said list and notice shall not be earlier than the first day of October, nor later than the first day of November, and on said day the county treasurer shall commence the sale of all real property described in such list and notice on which the taxes and charges have not been paid, and shall continue the sale from day to day, Sundays and holidays excluded, until each parcel, or so much thereof as is necessary to pay the taxes and charges thereon, has been sold. * * *"

The soldier has been protected by our Legislature from the sale of his property for delinquent taxes, as provided by the Legislature in a special enactment of 1943, as follows:

"3. Civil Relief

(a) Delinquent Tax Sales Suspended

Section 1. Exemption from sale for delinquent taxes.-- In recognition of the services to the nation of members of the combat forces and of the auxiliary services of the army and the navy of the United States, and in order that they may be relieved of anxiety while so engaged, the real or personal property belonging to and which at the time of induction is assessed in the name of any such member of the combat forces or auxiliary services shall not be subject to sale for delinquent taxes during the period of the existing war and for one (1) year thereafter, as determined by the proclamation of the President of the United States. As to such persons during said period the provisions of section 73-804, Arizona Code of 1939, are suspended." (War Measures, Vol. 5, Supp., page 501, ACA 1939)

This office has previously ruled that a state of war still exists and will continue until the President or Congress declares otherwise. The President's proclamation of the end of hostilities for tax purposes, is not an end of the war. We consider this exemption from sale for delinquent taxes extends to the present situation.

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USAF Staff Judge Advocate

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We see by this War Measure No. 3 that the Legislature did not make provisions for the soldier to claim his exemption but only to claim deferment for payment of his taxes. The question of appearing in person before the assessor of the respective counties or their deputies to claim exemption from taxes was not before the Legislature in 1943 when they enacted this war measure. The correction of this injustice is the problem of the Legislature and not for this office.

The Arizona Legislature will meet in regular session in January, 1951, and this matter, in all probability, will be called to their attention, but no one knows what they will do. This office suggests that each soldier, otherwise entitled to exemption, secure from his county assessor an affidavit form and fill it in, sign it before an individual authorized to take acknowledgments and file it with the county assessor before April 30 of each year so that he will be in a position to secure exemptions that might be provided for by the next Legislature.

Yours very truly,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

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